

INITIAL STATEMENT OF REASONS
(OSRO Rating)
May 12, 2006

The Lempert-Keene-Seastrand Oil Spill Prevention and Response Act (the Act) (see Government Code Sections 8574.1 through 8670.72) provides, in part, for the development of oil spill contingency plans for tank vessels, nontank vessels and marine facilities. These plans are to be used to prepare for the response effort that would be necessary in the event of a discharge of oil into the marine waters of the State. The Act authorizes the Administrator of the Office of Spill Prevention and Response (OSPR) to require that all necessary prevention measures are taken, and that sufficient response capability is available to handle a reasonable worst case oil spill. Additionally, the Administrator is required to establish regulations and guidelines that provide for the best achievable protection of the coastal and marine resources, and ensure that all areas of the coast are at all times protected by prevention, response, containment and clean-up equipment and operations.

Following the enactment of the above-cited legislation, and the establishment of the OSPR, regulations governing oil spill contingency plans were adopted to ensure that the affected public had clear and timely information regarding the development and submittal of these plans. Included in these regulations were provisions for the "Rating" of Oil Spill Response Organizations (OSROs) for specified services and time frames for response. Contingency plan holders that had a contract or other approved means for the booming, on-water recovery and storage, and shoreline protection services of a Rated OSRO do not have to list that OSRO's response resources in their plan.

The proposed amendments to the regulations are needed to implement the provisions of AB 715 (Chapter 748, Statutes of 2001), which outline the requirements for an OSRO "Rating" program, and require that contingency plan holders only contract with "Rated" OSROs. Additionally, a new approach to determining required shoreline protection resources have been included. Amendments of a clarifying or consolidating nature have also been included. The specific purpose for each adoption, amendment, or repeal contained in these proposed regulations is set forth below. Grammatical/technical changes have also been made throughout this subchapter, which have no regulatory effect). Note: The authority and reference citations have been updated throughout this subchapter to reflect the new provisions of AB 715 (Chapter 748, Statutes of 2001) and reorganization of the Act that was also brought about by that bill.

819.01 OIL SPILL RESPONSE ORGANIZAITON (OSRO) RATING
No Change.

819.02 OSOR APPLICATION CONTENT

Subsection (a) has been amended to remove reference to a general statement regarding dedicated resources being required for Ratings of six hours or earlier. Requirements for dedicated resources for on-water recovery and storage, and shoreline protection are addressed in the subsections dealing with those Ratings. A general statement about dedicated resources is not needed here.

Subsection (b)(1)(F) has been added to require information about the anchoring systems associated with the boom that is being listed in the OSRO application. Boom alone is not effective without an appropriate system to anchor the boom in place. Requiring that it be listed will give OSPR information to more fully evaluate the boom being provided by the OSRO.

Subsection (d)(2) has been amended to accommodate the shoreline protection requirements for small harbors, found in the new Shoreline Protection Tables (April 24, 2006). Shoreline protection requirements for small harbors, as listed in the Tables, are only required up to seven hours, so this subsection has been amended to limit the written plan of operation for small harbors.

Subsection (d)(4)(A) has been amended to include reference to the shoreline protection requirements in the New Shoreline Protection Tables, which have been incorporated by reference. Ratings for Shoreline Protection will be based on the OSRO's ability to carry out the strategies within the timeframes listed in these tables. [Note: for more information on the Shoreline Protection Tables, see the Initial Statement of Reasons for either the Tank Vessels requirements or the Nontank Vessel Requirements.]

Subsection (d)(4)(B) has been added so that an OSRO application for a Shoreline Protection Rating will include information to assure compliance with the appropriate SP Table. Ratings for Shoreline Protection will be based on the OSRO's ability to carry out the strategies within the timeframes listed in these tables. [Note: for more information on the Shoreline Protection Tables, see the Initial Statement of Reasons for either the Tank Vessels requirements or the Nontank Vessel Requirements.]

Subsection (d)(4)(D) has been amended to incorporate the Shoreline Protection Tables, which details the amounts and time frames for shoreline protection response resources for OSRO Ratings for shoreline protection. The required percentage of dedicate shoreline protection resources by Geographic Region has been added to inform the regulated community of these requirements. Dedicated resources, verses resources owned or under the control of another company, are particularly an issue for shoreline protection. In areas of limited tank vessel traffic, having staff and boats fully dedicated to oil spill shoreline protection functions would be cost prohibitive, and is not warranted by the risk potential of oil spills in these areas. This table outlines the percentage of dedicated boats and staff by Geographic Region.

[New] Subsection (d)(4)(E) has been added to explain the Small Harbor Table, which is part of the SP Tables that have been incorporated by reference. OSPR recognizes that some the requirements in the SP Tables may be too onerous for small tank vessels, which

carry small amounts of fuel and/or are used for only a limited duration (i.e., dredge barge for a specific project). Since these small vessels predominately operate in the small harbors listed in the Table, reduced requirements have been identified for them, along with allowing non-dedicated resources. OSRP feels that the requirements for these small tank vessels are commensurate with the risk of an oil spill posed by the vessels. OSRO that are contracted for small tank vessels that operated within the small harbors as listed must meet the requirements of this table to obtain a Rating for these harbors.

819.03 APPLICATION REVIEW, VERIFICATION AND DRILLS.

Subsection (c)(3) has been amended to remove reference to a written plan to correct deficiencies. This is now included in Section 819.06, which includes a more comprehensive due process for modification, suspension, revocation or denial of an OSRO Rating.

Subsection (c)(5) has been amended for clarity by removing the term “environmental” from “sensitive site”. This subsection now more appropriately discusses a drill of sensitive sites, which could include environmental, cultural or economic sites as well.

819.04 OSRO RATING, UPDATE, AND REVEWAL PROCESS

Subsection (b)(1) has been amended to reference Ratings for shoreline protection that are based on the new Shoreline Protection Tables. Also, an obsolete date is being removed.

Subsection (b)(2) has been amended to accommodate the requirements in the new Shoreline Protection Tables. Specific requirements for shoreline protection are now found in the Tables, and should not be included in this subsection. (The title of the subsection has been added to make it clear that this subsection now only deals with requirements for containment booming and on-water recovery and storage.)

Subsection (b)(3) has been added to clearly explain how Ratings for shoreline protection are to be obtained and evaluated.

Subsection (d) has been amended to give a more complete due process for OSRO Rating renewals.

819.05 NOTICE OF REDUCTION IN RESPONSE RESOURCES

No Change.

819.06 RATING MODIFICATION, SUSPENSION, REVOCATION, OR DENIAL

This section has been re-written to provide a more complete due process for Rating modification, suspension, revocation and denial. This will give the OSRO's information they need on the due process for modifications suspensions, revocations or denials to their Ratings.

819.07 RECONSIDERATION AND HEARING PROCEDURES

This section has been re-written to provide a more complete due process for the appeals process for Rating modification, suspension, revocation and denial. This will give the OSRO's information they need on the due process for modifications suspensions, revocations or denials to their Ratings, including the process for requesting a hearing after an appeal has been denied. This will inform the OSRO community their rights and the process for appeal should they disagree with the findings of the Administrator.

DOCUMENTS RELIED UPON

Technical, theoretical or empirical studies or reports relied upon:

°None

BUSINESS IMPACT

The OSPR has made an initial determination that the proposed amendments will not have a significant statewide adverse economic impact directly affecting California businesses, including the ability of California businesses to compete with businesses in other states.

SPECIFIC TECHNOLOGIES OR EQUIPMENT

The proposed amendments do not mandate the use of specific technologies or equipment.

CONSIDERATION OF ALTERNATIVES

No alternative which was considered by the OSPR would be more effective than or equally as effective as and less burdensome to affected private persons than the proposed amended regulations

COMPLIANCE WITH GOVERNMENT CODE SECTIONS 11346.2(b)(6), 11346.5, and 11349(f)

The regulations, which implement tank vessel contingency plan requirements, do not conflict with Federal statutes or regulations.